CONSTITUTIONALITY OF PROVISIONS OF PROHIBITION ACT RELATING TO TRANSPORTATION.

The Virginia constitution, sec. 52, provides that "no law shall embrace more than one object, which shall be expressed in its title." The title to the Prohibition Act in regard to transportation of ardent spirits reads "transportation for sale." Can the legislature under such title prohibit transportation for purposes other than sale, and are the provisions of the act relating to transportation for such other purposes constitutional?

The purpose of the constitutional provision as to the expression of the subject matter in the title of the statute is three-fold, (1) to prevent fraud or surprise upon the members of the legislature by means of provisions in a bill of which the title gives no intimation and which might otherwise be adopted unintentionally and without knowledge of its contents; (2) to enable the governor to exercise an intelligent veto power; and (3) to warn persons subject to the operation of a statute of its contents and to protect them against covert legislation, as the provision against the embracing of more than one object is to avoid the enactment of hidden provisions in laws relating to a different subject matter. The above purposes are properly stated in the conjunctive, as it is the purpose of the provision to protect all of the persons mentioned, and any person affected, whether a legislator, the governor or a mere citizen, may claim its benefits and object to the constitutionality of a statute which fails to comply therewith. In Brown *v.* Commonwealth, 91 Va. 762, 771, 21 S. E. 357, 360, 28 L. R. A. 110, quoted in Board *v.* Spilman, 117 Va. 201, 203, 84 S. E. 103, it is said: "The provision of the Constitution is a wise and wholesome one. Its purpose is apparent. It was to prevent the members of the legislature from being misled by the title of a law. It was intended to prevent the use of deceptive titles as a cover for vicious legislation, to prevent the practice of bringing together into one bill, for corrupt purposes, subjects diverse and dissimilar in their nature, and having no necessary connection with each other; and to prevent surprise or fraud in legislation by means of provisions in bills of which the titles gave no intimation."

The constitutional provision is to be liberally construed to

uphold the statute if practicable. Hurley *v.* Hurley, 110 Va. 131, 65 S. E. 472. This is nothing more than the ordinary rule of construction that a statute is to be construed as constitutional rather than unconstitutional. There is no necessity to construe the constitutional provision, for the words "which shall be expressed in its title" are clear and contain no such ambiguity as to make a resort to construction necessary or even permissible. As stated, the rule of liberal construction is to be applied to the title and body of the act of the legislature. All of which means simply that where the title is not clear and unambiguous but is open to construction, it is to be construed liberally and in favor of its compliance with the constitutional provision. The constitutional provision is mandatory and must be complied with. See Shields *v.* Burnett, 80 W. Va. 74.

Another rule is, if the subjects embraced in the body, but not specified in the title, have congruity or natural connection with the subjects stated in the title, or are cognate or germane thereto, the requirement of the constitution is satisfied. Whitlock *v.* Hawkins, 105 Va. 242, 248, 53 S. E. 401. This rule is, however, not applicable to the present discussion, for the title of the act makes no attempt to state generally its provisions, as by declaring its purpose to be to regulate or prohibit the use of ardent spirits, but attempts to specifically enumerate its various objects, thereby excluding those not enumerated. The rule means that the statement in the title will be given such general application as to embrace cognate and germane matters, but where there is no general statement in the title, it is perfectly clear that there is nothing to which a general application can be given.

As a general rule it is a sufficient compliance with the constitutional provision if the body of the act is fairly expressed in its title. But this test is not applicable in the present instance, for it does not involve the sufficiency of the expression but the expression of one thing as excluding another. No question arises as to the sufficiency of "transportation for sale," but only as to the construction of the words and the meaning of the legislature by the restriction of transportation to "transportation for sale."

In drafting the title to the act, the legislature committed two

of the gravest possible errors, (1) by failing to make a general statement of the purposes of the act, and (2) by attempting a detail or index of its contents. The latter is never necessary. Stewart *v.* Tennant, 52 W. Va. 559, 572, 44 S. E. 223. Had the legislature made the general statement that the act related to ardent spirits, the rule that matters cognate or germane may be embraced in the body of the act could be invoked, but instead the title must be construed according to the terms the legislature saw fit to use. The title attempts to enumerate specifically the various subjects covered. It is "an act to define ardent spirits and to prohibit the manufacture, use, sale, offering for sale, transporting for sale, etc." The only provision relating to transportation is "transportation for sale," and, if such provision does not cover the different sections of the act relating to transportation, and they are not covered by words referred to below, such sections are not expressed in its title. The title does not read broadly and generally, "transportation," but is restricted to "transportation for sale." Under the rule that the legislature is presumed to mean something by what it says, by the use of the expression "for sale," the legislature must be presumed to mean for sale. Any other construction would read out of the title the two words mentioned. Words can be read out of a statute only when necessary to give effect to an intention clearly appearing within its four corners. No such rule is applicable here, for there is no ambiguity. The title of the act consists of a clear and specific enumeration of various subjects in a manner which gives rise to no doubt or ambiguity. When an act is expressed in clear and precise terms—when the sense is manifest and leads to nothing absurd—there is no reason to refuse to adopt the sense which it naturally presents. Ryan *v.* Krise, 89 Va. 728, 17 S. E. 128.

The legislature may use either a general or a restrictive title for an act. A general title is one which is broad and comprehensive, and covers all legislation germane to the general subject stated. It is not necessary that it index the details of the act, or given a synopsis of the means by which the object of the statute is to be accomplished. All matters which are germane to the subject may be embraced in one act. A restrictive title

is one where a particular part or branch of a subject is carved out and selected as the subject of the legislation. When this is done, notwithstanding a general title could have been adopted, which would have covered the entire subject, and authorized legislation upon the whole of it, the body of the act must be confined to the particular portion of it expressed in the limited title. Memphis, etc., Ry. Co. *v.* Byrne, 119 Tenn. 278, 104 S. W. 460, 462. "The legislature may make the title of an act as restrictive as they please. It is obvious that they may sometimes so form it as to preclude many matters being included in the act which might with entire propriety have been embraced in one enactment with the matter enacted by the title, but which must now be excluded because the bill has been made unnecessarily restrictive. The courts can not enlarge the scope of the title. They are vested with no dispensing power. The constitution has made the title the conclusive index to the legislative intent as to what shall have operation. It is no answer to say that the title might have been more comprehensive, if in fact the legislature have not seen fit to make it so." Cooley on Const. Lim. In Ex parte Knight (Fla.), 41 So. 786, 788. it is said: "The subject of the act here considered, as expressed in the title, is restricted to enactments 'to prevent the cutting or removing of any timber' from certain lands, and any provisions contained in the body of the act that are fairly included in this restricted subject or matter properly connected therewith are valid and operative. But, if any provision contained in the body of the act is not fairly included in this restricted subject, to wit, 'to prevent the cutting or removing of any timber,' and is not matter properly connected therewith, such provision is invalid and inoperative. Penal provisions designed 'to prevent the cutting or removing of any timber' on certain lands are included within the restricted subject of this act; but a penal provision designed to prevent the 'gathering or removing of any turpentine extracted from the pine timber so cut or boxed' on the lands cannot be fairly included within such subject and matter properly connected therewith."

The only rule of statutory construction applicable to the present discussion is that the expression of one thing excludes an-

other. This rule is based upon a presumed intent of the legislature and must be given force unless there is a contrary intent apparent—in this case in the title itself. When the legislature speaks of "transportation for sale," their words must be construed to exclude transportation for any other purpose than "for sale." The proper manner in which to consider the sufficiency of the provision "transportation for sale" is to separate it from the other provisions of the title, which are independent of it, and consider it as standing alone and comprising the title to an independent act. Would it then be contended that it sufficiently apprised persons affected thereby of a provision in the body of the act making transportation for personal use unlawful?

There are two things in the title which may be referred to, to broaden the construction of "transportation for sale;" (1) the employment of the word "use" and (2) the words "except as provided herein." The expression of the prohibition of the "use" of ardent spirits may possibly be construed to embrace transportation for use. This could be done much more easily had not the legislature expressly limited transportation to "transportation for sale." As it is, the rule applicable here is that the specific terms, "transportation for sale," must prevail over the general term "use," and the expressed intent prevail over whatever may be implied. The other provision, "except as provided herein," is probably meaningless, as it does not express anything. The contents of a statute are not expressed in a provision in its title reading "except as provided herein." The title must be sufficiently expressive in itself and cannot be made sufficient by reference to the body of the act. "To hold that the legislature could, by the use of such a phrase as 'and so forth,' supply an omission and cure an otherwise defective title, would be to fritter away the constitutional provision, and render it illusive and nugatory. See Cooley on Constitutional Limitations, 6th ed., p. 174. These words express nothing and amount to nothing as a compliance with this constitutional requirement. Nothing which the act would not embrace without them can be brought in with their aid. Fishkill *v.* Fishkill & B. Pl. Road Co., 22 Barb. 634; Johnston *v.* Spicer, 107 N. Y. 185." Lacy *v.* Palmer, 92 Va. 159, 24 S. E. 930, 57 Am. St. Rep. 795, 31 L. R. A. 822.

Section 62 of the Virginia constitution provides that "the General Assembly shall have full power to enact local option or dispensary laws or any other laws controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors." This provision must necessarily be referred to in construing the title to the prohibition act. It is a statement of the legislative power, and the laws of the legislature enacted thereunder must be construed with reference to it. When so read, the title is restricted to transportation for sale, for it is the manufacture or sale only of ardent spirits which the legislature may control, regulate or prohibit. When the constitutional provision and the title of the act are read together, one is apprised of the fact merely that the transportation of ardent spirits is prohibited when for sale.

While not a proper part of the scope of this article, a few remarks upon the general constitutional powers of the legislature, under § 62 of the constitution, are not entirely out of place. Can the legislature under this provision enact laws other than those "controlling, regulating, or prohibiting the manufacture or sale of intoxicating liquors?" The words "controlling, regulating, or prohibiting" all refer to, and are restricted by, the words "manufacture or sale." The power granted to the legislature is a restricted one. However, the legislature does not derive its powers from the state constitution, and, as to matters not ceded to the Federal government, its legislative powers are without limit, except so far as restrictions are imposed by the constitution of the state in express terms or by strong implication. See 1 VA. LAW REG. N. S., 668. Had this provision never been inserted in the constitution, the legislature would, under the Webb-Kenyon Act, have absolute and complete power with reference to intoxicating liquors. The provision of the constitution contains no express restriction upon such power. Is the power impliedly restricted? Judge Keith, in Whitlock *v.* Hawkins, 105 Va. 242, 53 S. E. 401, 12 VA. LAW REG. 284, states that the implication must be strong. The clear and emphatic expression of one thing and exclusion of another does certainly give rise to a strong implication of a restriction upon the legislative powers. When the people of the state, in constitu-

tional convention, granted the legislature the power to control the manufacture and sale of ardent spirits, they impliedly restricted the powers of the legislature thereto. This conclusion is strengthened by the fact that such power was already vested in the legislature, and that the only effect the constitutional provision could have is to restrict that power. Otherwise, the constitutional provision is mere meaningless surplusage. The provision must be construed with reference to the time of its adoption and the contemporaneous ideas relating to the power of the state to regulate ardent spirits together with other facts and circumstances, all of which tend to show that the convention had in mind the regulation of manufacture and sale only and not of personal use and transportation.

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